

## **REMARKS**

The claims have been amended. Specifically, claims 26, 33, and 36 have been amended to more clearly set forth the subject matter of the invention, and new claim 39 has been added. Reconsideration of the present application is respectfully requested in view of the amendments, the accompanying Declaration, and the remarks below.

## **INFORMATION DISCLOSURE STATEMENT**

The Office Action stated that the IDS filed September 14, 2009 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of its relevance.

In response, Applicant's representative has alternatively cited U.S. Patent No. 6,863,977, from which priority is claimed to PCT Publication No. WO 03/057953.

Accordingly, Applicant's representative respectfully requests that U.S. Patent No. 6,863,977 be considered along with the present amendment.

## **SPECIFICATION**

The Examiner has objected to the specification as lacking antecedent basis for the claimed subject matter in claim 33. Applicant respectfully submits that the amendment of claim 33 obviates this objection.

## **SECTION 112**

Claim 33 has been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully submits that the amendment of claim 33 obviates this ground of rejection.

## **SECTIONS 102/103**

Claims 1, 2, 4-7, 12, 14, 15, 35 and 38 have been rejected under 35 U.S.C. §102(f) because Applicant did not invent the claimed subject matter. The Examiner cites references to "DuPont Airbag Fibers." Applicant respectfully traverses given that the medical protection sheeting of the present invention includes limitations not disclosed by and not inherent in "DuPont Airbag Fibers."

Claims 1 and 38 are directed to an article comprising a medical protection sheeting formed from a woven low frictional material which includes a patient contacting surface. These elements are not disclosed in the "DuPont Airbag Fibers" documents.

Even though it is understood that a fiber or yarn can be used to prepare a fabric, the properties of the yarn, particularly with respect to the coefficient of friction, cannot be directly correlated to the properties of a fabric prepared from the yarn. The coefficient of friction of the yarn can be expected to be different from a fabric made from the yarn, while one fabric made from the yarn may have a different coefficient of friction than a different fabric made from the same yarn. See paragraphs 8 to 12 of the Declaration.

Moreover, the materials referred to in the cited documents are fibers, not fabrics of which the presently claimed medical protection sheetings are comprised. In addition, the low frictional materials of the present claims require a specific frictional property, i.e, having a coefficient of static friction substantially the same as its coefficient of dynamic friction. This property is not disclosed by the “DuPont Airbag Fibers” documents. Significantly, there is no disclosure, teaching or suggestion to prepare a fabric for any medical use. Accordingly, reconsideration and withdrawal of the rejections of claims 1 and 38 under Section 102(f) are appropriate and respectfully requested.

Dependent claims 2, 4-7, 12, 14-15, and 35 depend either directly or indirectly from claim 1 and are allowable for the reasons stated above with respect to claim 1, and because of their own distinctive features *See In re Fine*, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (stating that if an independent claim is nonobvious, then any claim depending therefrom is nonobvious). Accordingly, claims 2, 4-7, 12, 14-15, and 35 are in condition for allowance, and a notice to that effect is respectfully requested. Should the Examiner disagree, she is encouraged to contact the undersigned to discuss.

Claims 1 and 34 - 38 have been rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,051,565 to Berge, “Berge.” Applicant respectfully traverses.

Claims 1, 36, and 38 are directed to an article comprising a medical protection sheeting formed from a low frictional material having a patient contacting surface.

Berge is directed to a mat conveyor having a tubular configuration with a high frictional patient-contacting surface. Although Berge discloses the inclusion of a low friction nylon material, this material is located on the interior surface of the tube and cannot contact the

patient. Accordingly, Berge fails to disclose the claim element of a low frictional material having a patient-contacting surface as featured in claims 1, 36 and 38.

In addition, Berge teaches that the patient contact surface of the mat conveyor should have a high frictional surface. As such, Berge clearly teaches away from using a low frictional surface in contact with the patient. To provide such a low frictional, patient contacting surface on the outer surface of Berge's mat conveyor would destroy the intent and purpose of Berge and is clearly contrary to his teachings.

The Examiner has stated that the interior surface of the Berge mat would be capable of contacting a patient, however, this possibility is insufficient to establish anticipation since such a contact is contrary to the intent and purpose of Berge. The standard of inherency is very clear. "Inherency...may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981). [citations omitted]. In other words, the element that is asserted to be inherent must necessarily and inevitably be present in the disclosure. Berge fails to disclose patient contact with the low friction surface and as such fails to anticipate the present claims.

The Examiner has also stated that the Warner reference shows that coefficient of static friction is no more than 20% of its coefficient of dynamic friction. Although, Table 14.2 of Warner does show that coefficient of static friction is within 20% of the dynamic coefficient of friction for nylon-on-nylon, this data does not demonstrate both coefficients are less than 0.4 for the protection sheeting-on-linen as specified in claim 1 of the present application. Nor does Warner provide any teaching of fabric-on-fabric coefficients of friction, which will be expected to differ as described above and in paragraphs 8 to 12 of the attached Declaration.

For the reasons that Berge fails to disclose or teach every element of claims 1, 36 and 38, and that Berge teaches away from the use of a low friction patient contacting surface, Applicant respectfully submits that Berge fails as a proper reference under Section 102. Therefore, reconsideration and withdrawal of the rejections of claims 1, 36, and 38 over Berge are respectfully requested.

Dependent claims 34-35 and 37 depend either directly or indirectly from claims 1 and 36 are allowable for the reasons stated above with respect to claims 1 and 36, and because of their

own distinctive features. See *In re Fine*, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (stating that if an independent claim is nonobvious, then any claim depending therefrom is nonobvious). Accordingly, claims 34-35 and 37 are in condition for allowance, and a notice to that effect is respectfully requested. Should the Examiner disagree, she is encouraged to contact the undersigned to discuss.

Claims 1, 2, 4, 6, 12, 26, and 34 have been rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,329,655 to Garner, ("Garner"). Applicants respectfully traverse. With respect to claims 1 and 26, Garner fails to disclose every element of the present claims.

As stated in paragraph 7 of the attached Declaration, Applicant respectfully submits that the Examiner's interpretation of "linen" is inconsistent with the knowledge of those of skill in the art. In addition, the Warner reference can only be accepted for what it teaches which are coefficients of friction for fibers, not for fabrics due to the fact that these coefficients of friction will differ depending on the fabric construction.

Garner discloses a slideable hospital sheet for turning patients. Garner's sheet includes a portion of a "slick fabric" that may be made from polyester, satin, and rayon. However, Garner fails to disclose that his "slick fabric" has a coefficient of static friction substantially the same as its coefficient of dynamic friction as required by the present claims. In fact, Garner does not provide any disclosure as to what coefficients of friction his "slick fabric" may have. Garner makes it clear that the fiber content alone does not determine whether a fabric will be a high friction fabric or a low friction fabric. This is evidenced by Garner's disclosure of polyester as a "material [which] offers a substantial frictional drag" at column 3, beginning at line 55, in contrast to Garner's disclosure of polyester as a "slick fabric" at column 4, lines 17-20.

The Examiner has stated in paragraph 11 of the Office Action that, "a low frictional material" as disclosed by Garner will have a low coefficient of static friction which is 'substantially the same' as its low coefficient of dynamic friction. Nowhere in Garner can Applicant find any such teaching.

In addition, Garner, similarly to Berge, fails to disclose a low frictional material which is a patient-contacting surface. The patient-contacting service of Garner's slideable hospital sheet is a high frictional material. As such, Garner also clearly teaches away from using a low frictional

surface in contact with the patient. To provide such a low frictional, patient-contacting surface on the patient contacting surface of Garner's slideable hospital sheet would destroy the intent and purpose of Garner and is clearly contrary to his teachings.

Throughout the Office Action, the Examiner has asserted that "It is generally well known in the art that a low frictional material will have a coefficient of static friction substantially the same as its coefficient of dynamic friction that is less than 0.4." Nowhere in Garner can Applicant find any such teaching.

Garner fails as a proper reference under Sections 102 for failing to disclose every element of the claims as amended, particularly with respect to the coefficient of friction of the material of the medical protection sheeting. Accordingly, reconsideration and withdrawal of the rejections of claims 1 and 26 in view of Garner are respectfully requested.

Dependent claims 2, 4, 6, 12, and 34 depend either directly or indirectly from claim 1 and are allowable for the reasons stated above with respect to claim 1, and because of their own distinctive features. See *In re Fine*, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (stating that if an independent claim is nonobvious, then any claim depending therefrom is nonobvious). Accordingly, claims 2, 4, 6, 12, and 34 are in condition for allowance, and a notice to that effect is respectfully requested. Should the Examiner disagree, she is encouraged to contact the undersigned to discuss.

Claims 2 and 35 have been rejected as unpatentable under Section 102 or obvious under Section 103 in view of Berge. Similarly, claims 2, 4, 6, 12 and 35 have been rejected in view of Garner. Applicant respectfully traverses for the reasons set forth above. Specifically, neither Berge nor Garner disclose every element of the present claims and as such fail as appropriate references under both Sections 102 and 103.

Claims 4-7, 12, 14, and 15 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Berge in view of U.S. Patent Application Publication No. 2006/0252322 to DeBenedictis et al. ("DeBenedictis"). These rejections are respectfully traversed.

DeBenedictis is cited only as teaching specific elements of dependent claims. DeBenedictis fails to overcome the deficiencies of Berge (discussed above) with respect to

teaching every element of the present claims. Accordingly, the combination of Berge with DeBenedictis fails to provide a *prima facie* case of obviousness. Reconsideration and withdrawal of these rejections are respectfully requested.

Claims 8 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Garner in view of U.S. Patent No. 5,176,624 to Keuhnreich (“Keuhnreich”). These rejections are respectfully traversed.

Keuhnreich is cited only as teaching specific elements of dependent claims. Keuhnreich fails to overcome the deficiencies of Garner (discussed above) with respect to teaching every element of the present claims. Accordingly, the combination of Garner with Keuhnreich fails to provide a *prima facie* case of obviousness. Reconsideration and withdrawal of these rejections are respectfully requested.

Claims 16-22 and 27-32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Keuhnreich in view of U.S. Patent No. 5,778,565 to Holt et al. (“Holt”). These rejections are respectfully traversed.

Claims 16 and 27 include, among other elements, a boot comprising a medical protection sheeting formed from a low frictional material having a coefficient of static friction substantially the same as its coefficient of dynamic friction. Kuehnreich appears completely void of any teaching or suggestion of such features found in claim 16, and the addition of Holt fails to cure this deficiency. In addition, Kuehnreich teaches that its shoe bandage is formed from an “elastic type bandage material,” which is typically associate with characteristics of a high coefficient of friction material. Accordingly, reconsideration and withdrawal of the rejections over Kuehnreich in view of Hold with respect to claims 16 and 27, and the claims which depend therefrom.

Claim 33 has been rejected under 35 U.S.C. §103(a) as unpatentable over Garner in view of U.S. Patent Application Publication No. 2004/0116022 to Langley et al. (“Langley”). This rejection is respectfully traversed.

Langley is cited only as teaching specific elements of dependent claims. Keuhnreich fails to overcome the deficiencies of Garner (discussed above) with respect to teaching every

element of the present claims. Accordingly, the combination of Garner with Keuhnreich fails to provide a *prima facie* case of obviousness. Reconsideration and withdrawal of these rejections are respectfully requested.

## **CONCLUSION**

For the reasons stated above, the present claims are believed to be in condition for allowance. Accordingly, Applicants respectfully request that the Application be allowed. If prosecution may be further advanced, the Examiner is invited to telephone the undersigned to discuss this application.

Date: August 18, 2010 Respectfully submitted,

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